

IN THE SUPREME COURT OF NEW ZEALAND

**SC45/2009
[2010] NZSC 1**

BHIKUBHAI PATEL

v

THE QUEEN

Court: Blanchard, McGrath and Wilson JJ

Counsel: P V Paino for Applicant
S B Edwards for Crown

Judgment: 5 February 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The Court of Appeal¹ dismissed the applicant's appeal against conviction for attempting to procure murder and associated charges of threatening to kill. Mr Patel had tried to persuade a man called K to kill another person whom Mr Patel believed was having an affair with his wife. K went to the police and some subsequent conversations he had with Mr Patel were recorded.

¹ *R v Patel* [2009] NZCA 159 (Glazebrook, Chisholm and Cooper JJ).

[2] K had a criminal record but plainly the jury believed his account, supported by the tape recordings and other evidence.

[3] The first proposed ground of appeal is that, contrary to settled law in this country, the police are obliged when in receipt of a complaint about an offence or suspected offence to interview the suspected person at the first opportunity. This argument, which Mr Paino pursued on instructions, is plainly untenable even if it were confined to offending of the kind of which Mr Patel has been convicted. There is simply no such obligation on the part of the police to intervene immediately. It may in fact be poor police practice to do so when they are still gathering evidence of a crime committed or ongoing.

[4] Then it is said that Mr Patel was the victim of a “set up” involving trickery and taken advantage of by K. This is an issue of fact which the Court of Appeal has reviewed, rejecting Mr Patel's allegations as did the trial Judge on sentencing. Contrary to Mr Patel's submission, there is no good reason to introduce a rule that persons with criminal convictions should not be used as informers in a situation of this kind.

[5] Finally, it is said that the recordings are unreliable. The Court of Appeal, for the reasons it gave, rightly rejected this argument. The failure of the police to retain the original recordings does not in the circumstances give rise to an appearance of miscarriage.

[6] Mr Patel has belatedly requested that we defer addressing his leave application until he has taken the matter back to the Court of Appeal. There is no merit in his appeal and the disposal of the matter should not be further delayed.

Solicitors:
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